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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,308	07/30/2003	Robert M. Rauker	1001.1512101	9063
28/075 7590 05/12/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/630,308

Applicant(s)

RAUKER ET AL.

Examiner

Eric Blatt

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6-15, 21-23 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14, 21-23 and 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claim 15 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

Claim Objections

Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 merely reiterates lines 5 and 6 of base claim 1 with regard to the ports proximal of the distal end.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites, "the one or more aspiration ports are located circumferentially and/or longitudinally on the elongated shaft," while claim 1, from which claim 11 depends, recites, "the one or more aspiration ports located circumferentially on the

elongated shaft at one or more longitudinal positions proximal of the distal end." These recitations seem to contradict one another to a degree and thus render the claim indefinite.

Regarding claim 14, the phrase "etc." renders the claim(s) indefinite because the claim includes elements not actually disclosed (those encompassed by "etc."), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Belef et al. (US 7,169,165).

Belef discloses a filter delivery catheter (Figures 1B and 3A) comprising an elongated shaft 10 including one or more aspiration ports 16 located along the circumference of the elongated shaft. Although Belef does not directly address aspiration in the embodiments shown in Figures 1B and 3A, Belef does discuss connecting the proximal end of the shaft to a suction source to aspirate embolic material at the distal end of the shaft in other embodiments. (See at least Col. 8, Ln 39-40)

Thus, the port 16 is fully capable of being used as an aspiration port. The delivery catheter further includes a blood permeable filtration device 50 having an expanded configuration and a collapsed configuration being sized to fit within the shaft lumen. There is a guidewire 20 slidably disposed within the shaft lumen 11 wherein the guidewire 20 passes through the aspiration port 16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 6-14, 21, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belef et al. (US 7,169,165) in view of Tao (US 6,610,005).

As previously discussed, Belef does not directly address aspiration in the embodiments shown in Figures 1B and 3A, but Belef does discuss connecting the proximal end of the shaft to a suction source to aspirate embolic material at the distal end of the shaft in other embodiments. (See at least Col. 8, Ln 39-40) It would have been obvious to one of ordinary skill in the art to connect the shaft 10 shown in Figures 1B and 3A to a suction source in order to aspirate embolic material as taught by Belef. Belef teaches that the aspiration ports are in communication with a suction providing means via the elongated shaft as previously discussed. The filtration device 50 is a

floating filter 50 and is fixedly attached to a wire. (Figures 1B and 3A) The aspiration ports are located both along the circumference and along the length of the shaft.

Thus, Belef teaches all elements of claims 1, 3, 4, 6-14, 21, 22 and 26 except for an operable end cap disposed on the elongated shaft distal to the filtration device. Tao discloses a number of end cap embodiments that are fixedly attached to the distal end of a catheter 24 for preventing debris from entering the catheter while it is advanced through a body lumen. (Figures 4-10 and 20-22) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Belef by providing an end cap fixedly attached to the end of the shaft 10 in order to achieve these benefits.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belef et al. (US 7,169,165) in view of Tao (US 6,610,005) as applied to claim 1 above, and further in view of Hoy (US 6,705,575).

Regarding claims 27-29, Tao teaches providing an end cap such as that shown in Figure 22 on the distal end of the Belef catheter 10 as discussed above. This end cap comprises a plurality of plates, but it is unclear whether the plates will interleave to any degree during operation. Hoy discloses a device having a related cap-like means 40 comprising a plurality of overlapping plates 44 (Figures 1 and 5A-5C). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the plates of the Tao cap such that they interleave since interleaving plates were well known and it causing the plates to interleave would not have produced unexpected

results. The plates form a dome shape as shown in Figure 20 of Tao. The shape depicted in Figure 20 may also be considered to generally comprise a cone shape. Alternatively, it would have been obvious to form the plates such that they form a cone shape since this issue is an obvious matter of design choice and would not materially affect the function of the device.

Response to Arguments

Applicant's arguments with respect to claim 1, 3, 4, 6-14, 21-23 and 26-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Blatt/
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734